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No. 941

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CHARLES ELMORE CROPLEY
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Supreme Court of the United States.

OCTOBER TERM, 1942.

JOHN HANCOCK MUTUAL LIFE INSURANCE
COMPANY,
Petitioner,

v.

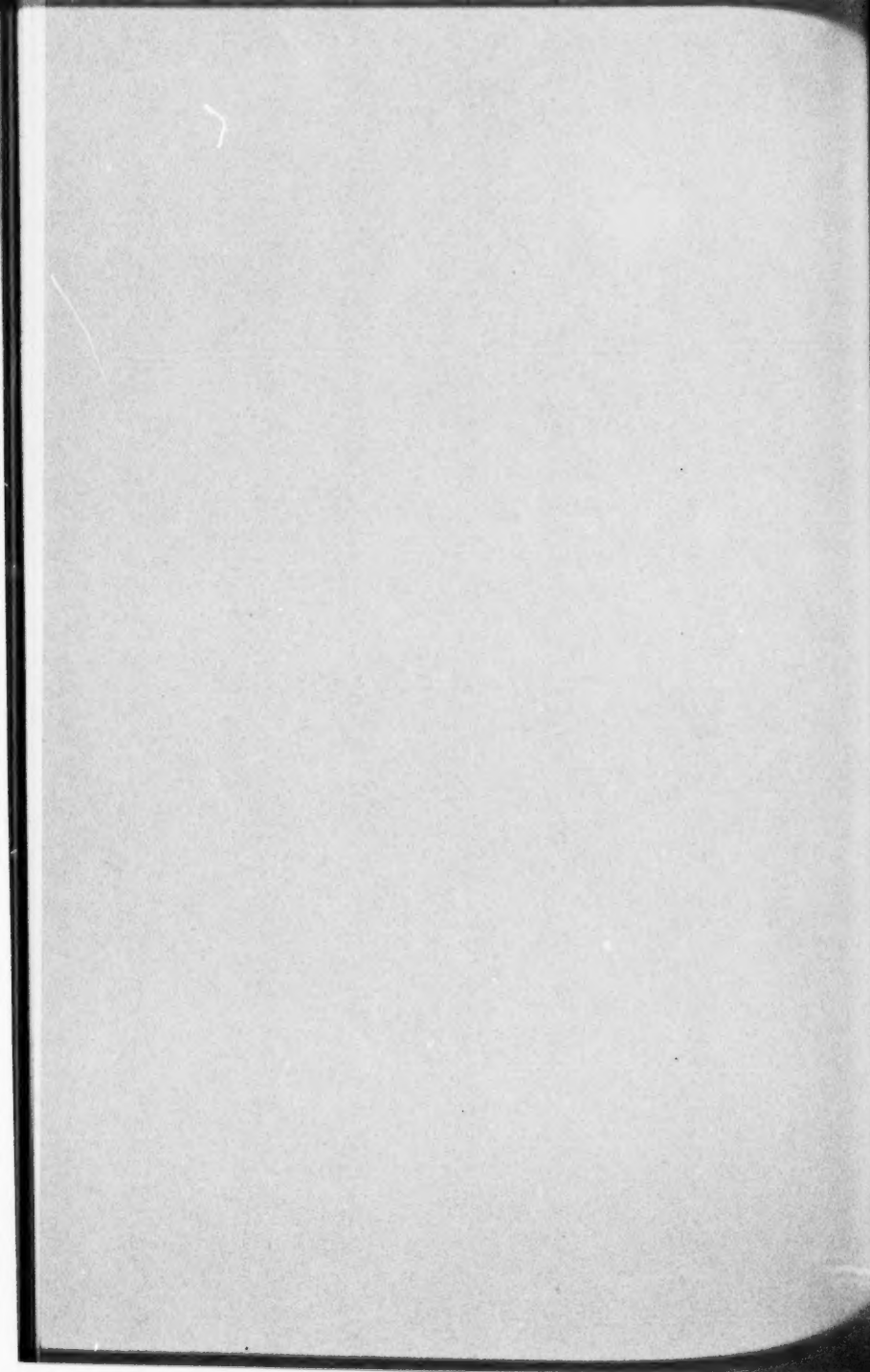
THOMAS J. CASEY, TRUSTEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT THEREOF.

GARALD K. RICHARDSON,
*Attorney for JOHN HANCOCK MUTUAL
LIFE INSURANCE COMPANY, Petitioner.*



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THOMAS J. CASEY, TRUSTEE,

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PETITION FOR WRIT OF CERTIORARI.

Summary of Matters Involved.

This petition seeks a review of a decision of the Circuit Court of Appeals for the First Circuit dismissing the petitioner's appeal from the various orders and findings of the District Court contained in an "Order Approving Trustee's Petition for Injunction and Findings of Fact" entered September 16, 1942 (Record, pages 21 to 24), upon the trustee's petition for an injunction (Record, page 7), and an "Order for Turn Over" dated September 17, 1942 (Record, page 41), entered on trustee's petition for turn over (Record, page 25), and from the orders denying mo-

tions to dismiss the petition for injunction and petition for turn over.

On November 1, 1940, Carlton Hotel, Inc., hereinafter referred to as the "debtor," purchased from John Hancock Mutual Life Insurance Company the premises known as the Hotel Buckminster, and certain personal property contained therein, for \$360,000, giving as part of the purchase price a mortgage note (Record, page 28) in the sum of \$345,000 and as security for said note conveyed in mortgage said real and personal property and assigned the existing leases, which assignment included the Yankee Network lease hereinafter referred to (Record, pages 30, 35 and 39).

On August 1, 1942, the debtor failed to make the payments on the mortgage note provided to be made on that date, and thereafter on August 5, 1942, the debtor filed its petition under the provisions of Chapter 10 of the Bankruptcy Act, alleging the existence of the aforementioned real and personal property mortgages and debt and that "the terms and conditions of said mortgage are burdensome and in need of adjustment; the mortgagee threatens to foreclose its mortgage."

On August 12, 1942, the mortgagee for the aforementioned breach of condition of the said mortgages took possession of the property conveyed thereby and duly recorded evidence of its possession (Respondent's Exhibit A, page 42), and thereafter continued in possession of the real and personal property conveyed by said mortgages.

On August 17, 1942, the United States filed a petition for condemnation and obtained an order for possession upon its petition condemning for use for military purposes the real estate conveyed by said mortgage, excepting therefrom that portion of the premises covered by the lease to the Yankee Network herein referred to.

On August 18, 1942, an order was entered approving the debtor's petition for reorganization and Thomas J. Casey was appointed trustee of the debtor.

On August 31, 1942, the trustee filed a petition for injunction alleging that the real estate and personal property conveyed by said mortgages are the principal and only assets of any real value owned by the debtor and "that the foreclosing of said mortgages, will deprive the general unsecured, as well as the secured creditors of the debtor corporation of any possibility of recovery of any portion of the debts due them from the debtor, that the foreclosing of said mortgages is unfair, and unjust, and unwarranted, and is devoid of any equity," pursuant to which petition the court, on September 16, 1942, upon consideration of the pleadings and statements of facts presented by counsel, issued an injunction (1) restraining the mortgagee from "proceeding with the foreclosure proceedings brought to foreclose the mortgages" on the real and personal property and restraining the mortgagee from exercising the power of sale contained in the mortgages, (2) ordering the mortgagee to relinquish possession of the said real and personal property covered by said mortgages, and (3) ordering the mortgagee to surrender said real and personal property to the trustee, and on September 17, 1942, the court ordered the mortgagee to turn over to the trustee \$1100 collected from the Yankee Network as rent for the month of September, 1942 (Record, page 41).

The petitioner by its appeal to the Circuit Court of Appeals challenged the orders of the District Court on the grounds that they were based upon an improper construction of Title 11, Chapter 10, United States Code, 1940 Edition (the Chandler Act), and if so construed, the Chandler Act was invalid in that it violated the Fifth Amendment of the Constitution.

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of the United States Code, 1940 Edition, Title 11, Section 47C, and Section 240, Judicial Code as amended, United States Code, 1940 Edition, Title 28, Section 347.

The Questions Presented.

1. Where, because of default, a mortgagee under a Massachusetts statutory form mortgage had, prior to and at the time of filing of the debtor's petition for reorganization, the title to and the right to the possession of the mortgaged property, should the provisions of Chapter 10 of the Bankruptcy Act be construed to

- (a) take from the mortgagee and transfer to the trustee the right to possession or the possession taken and held by the mortgagee after the filing of the petition;
- (b) authorize the court to restrain the mortgagee from exercising the power of sale contained in the mortgage;
- (c) authorize the court to order the mortgagee to turn over to the trustee the rents collected from a tenant;
- (d) authorize the court to order the mortgagee, which is also an assignee under a valid assignment of leases, to turn over to the trustee the rents collected by virtue of such assignment?

2. If Chapter 10 of the Bankruptcy Act is so construed, does it violate the Fifth Amendment of the Constitution of the United States?

Reasons Relied on for the Allowance of the Writ.

While there have been numerous decisions under prior Bankruptcy Acts upon the precise points here raised, this is the first occasion on which they have been raised under the Chandler Act and here for the first time are presented questions of the first importance relating to the proper interpretation of that Act which should be passed upon by this court, not only for the benefit of the parties here involved, but for the benefit of the parties in the many pending and future petitions for reorganization under Chapter 10 and for the benefit of the many banks, insurance companies and persons holding mortgages in those jurisdictions where a mortgage is a conveyance of title to the property rather than a lien.

If the Chandler Act, unlike prior Bankruptcy Acts, is to be construed to extend the jurisdiction of the Bankruptcy Court to the administration of property to which the bankrupt has neither the title nor the right to the possession, there is here presented a question of the validity of that Act on constitutional grounds involving a conflict between that Act and the Fifth Amendment of the Constitution which should be determined by this court.

If the Chandler Act has not thus extended the jurisdiction of the Bankruptcy Court, the decision of the Circuit Court of Appeals would appear to be in conflict with the decisions of this court in the following cases:

Tuttle v. Harris, 297 U.S. 225;

Duparquet v. Evans, 297 U.S. 216;

Louisville Stock and Land Bank v. Radford,
295 U.S. 555;

and with the decision of the Circuit Court of Appeals for the Third Circuit in—

Continental Bank and Trust Co. of New York v. Nineteenth and Walnut Streets Corporation, 79 Fed. (2d) 284;
Reighard v. Higgins Enterprises, Inc., 90 Fed. (2d) 569;

and with a decision of the Circuit Court of Appeals for the Seventh Circuit:

In re Frances E. Willard National Temperance Hospital, 82 Fed. (2d) 804;

and with a decision of the Circuit Court of Appeals for the First Circuit:

In re Ginestri, 15 Fed. (2d) 764;

and with the decision of the Supreme Judicial Court of Massachusetts in—

Harlow Realty Company v. Cotter, 284 Mass. 68.

The decision of the Circuit Court of Appeals involved an important question of Massachusetts law relating to the title and right to possession of real and personal property and was decided in a way in conflict with decisions of the Supreme Judicial Court of Massachusetts in—

Hall v. Bliss, 118 Mass. 554;

Landon v. Emmons, 97 Mass. 37 (personal property);

City of Boston v. Quincy Market Cold Storage and Warehouse Company, 1942 Massachusetts Advance Sheets, page 1867 (decided December 30, 1942)—

to the effect that "the mortgagee has the legal title to the mortgaged real estate, subject, however, to defeasance, and in this aspect the mortgagee is the owner of such real estate" (quotation is from said last-mentioned case, at page 1877).

Upon the question involving the assignment of rents, the decision of the Circuit Court of Appeals is in conflict with the decision of a District Court in—

In re H. K. Porter, 24 Fed. Supp. 767.

The Circuit Court of Appeals has improperly applied the decision of this court in—

*Continental Illinois Bank and Trust Company
v. Chicago, Rock Island and Pacific Railway
Company*, 294 U.S. 648—

which improper application should be corrected.

In the interest of brevity your petitioner does not at this time set forth all the points which it urged at the argument on appeal of this cause to the Circuit Court of Appeals, but in order to comply with the rule of this court requiring that all issues upon which decision is requested be presented in the petition for certiorari, the petitioner here refers to and incorporates in this petition all of the matters presented in the "Statement of the Points on Which Appellant Intends to Rely Upon Appeal" (Record, page 44 *et seq.*) with the same force and effect as if herein set out in full.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals commanding that court to certify and to

send to this court for its review and determination on a day certain to be therein named a transcript of the record and proceedings therein and that the decree of the Circuit Court of Appeals for the First Circuit and the District Court for the District of Massachusetts be reversed by this Honorable Court and your petitioner have such other and further relief in the premises as to this Honorable Court may seem just and proper.

JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY,

By its Attorney,

G. K. RICHARDSON.

